

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 19, 2006

STATE OF TENNESSEE v. MARCUS D. SHIELDS

Direct Appeal from the Circuit Court for Montgomery County
No. 40200439 Michael R. Jones, Judge

No. M2005-02071-CCA-R3-CD - Filed September 26, 2006

Following a jury trial, the defendant, Marcus D. Shields, was convicted of second degree murder, aggravated assault, which the trial court merged into the second degree murder conviction, and two counts of reckless endangerment. The trial court sentenced the defendant as a violent offender to twenty-five years for the second degree murder conviction and eleven months, twenty-nine days for each of the reckless endangerment convictions, with all sentences to be served concurrently. The defendant's sole issue on appeal is whether the evidence is sufficient to support his second degree murder conviction. Following our review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and J.S. DANIEL, SR. J., joined.

Roger E. Nell, District Public Defender (on appeal), and Russel A. Church, Assistant Public Defender (at trial), for the appellant, Marcus D. Shields.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; John Wesley Carney, Jr., District Attorney General; and C. Daniel Brollier, Jr., Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

The defendant was indicted by the Montgomery County Grand Jury for first degree premeditated murder and aggravated assault involving the victim, Michael James Walker (Counts 1 and 2); aggravated assault against Shannan Reeves (Count 3); and aggravated assault against Sarah MacDonagh (Count 4). Codefendants Eric Adams and Devin Hendrix were indicted for the same offenses as the defendant, and codefendant Rick Banasiak was indicted for the aggravated assault offenses only. At the close of the proof at the defendant's January 21, 2003, trial, the trial court

reduced the aggravated assault charge in Count 4 to reckless endangerment. The jury convicted the defendant of the lesser-included offense of second degree murder in Count 1; aggravated assault in Count 2, which the trial court merged into Count 1; the lesser-included offense of reckless endangerment in Count 3; and reckless endangerment in Count 4.

State's Proof

Agent Jameson Wiroll of the Clarksville Police Department testified that on January 14, 2002, at approximately 11:00 p.m., he responded to a shooting call at 1890 Patricia Drive. He found the victim, Michael Walker, lying facedown in the living room with "a pool of blood by his facial hair." Shannan Reeves and four or five other people who were present told Agent Wiroll that Walker had been shot.

Linda Walker, who was not related to the victim, testified that on January 14, 2002, she lived at 1876 Patricia Drive which was approximately 100 yards from the victim's residence. She said that, while sitting on her front porch that night, she observed a white car and a darker car drive slowly up the street and stop side-by-side before parking across from the victim's house. She did not see anyone get out of either car but heard three "firecrackers or . . . gunshots" which occurred "consecutively, bam, bam, bam." She then saw both cars leave but did not call the police because she thought the noise she heard was firecrackers.

Sarah MacDonagh testified that, although she did not know codefendant Eric Adams, he called her cellular telephone around 9:00 p.m. the night of the shooting while she was walking with Shannan Reeves to the victim's house. Adams told MacDonagh that he had met her at a bar, but she had never been to that bar. She acknowledged that Adams did not make any sexually offensive remarks to her or threaten her during their conversation. Upon their arrival at Walker's house, MacDonagh and Reeves told Walker about the telephone call, and Reeves called Adams back as "a joke." MacDonagh said that Reeves spoke in "a feminine voice" and led Adams to believe "from the tone of his voice and the words that he was using that he was a homosexual." During the next two hours, numerous calls were made between Walker, Reeves, and Adams. MacDonagh heard the men talking about getting together to fight and heard Reeves tell the man on the other end of the line if he brought a gun, Reeves would do likewise. She also heard Reeves or Walker give directions to Walker's house to the callers, and she, Walker, and Reeves were sitting on the front porch when a white, four-door car and a dark-colored car drove up the street. MacDonagh got inside the van parked in the driveway and saw Adams, who was yelling, get out of the passenger's side of the white car and stand in front of the headlights. Walker was standing behind the van, and Reeves was on the porch. Someone inside the white car repeatedly yelled for Adams to get back in the car and, as he turned toward the car, MacDonagh heard three gunshots "[l]ike – bang, bang, bang – space between the first two." The car then sped off and MacDonagh tried to help Walker, but "he wouldn't get up, he was just – crawling on the porch." She said Walker crawled inside to the living room where he collapsed.

Detectives James Richard Heaton and Jennifer Hyer of the Clarksville Police Department testified that they made a videotape of the crime scene, which was played for the jury. Detective Hyer said that she made a list of the numbers shown on the caller identification on Walker's home telephone and that there was a call from Devin Hendrix at 10:06 p.m. and a call from Eric Adams at 10:54 p.m.

Dr. Feng Li testified that he performed the autopsy on the victim's body and determined that the cause of death was a gunshot wound to the back. He recovered a bullet from the victim's chest, explaining that the bullet traveled from the victim's back through the chest cavity and rib cage stopping "short of perforating through the skin of the chest."

Shannan Reeves testified that he was with McDonagh when she received the phone call from Adams and that he later decided to make a "prank call" to Adams. He acknowledged that he led Adams to believe that he was a homosexual and told him they had met at a "gay club." Reeves said "a whole bunch of calls" followed which eventually led to the discussion of meeting to fight and "a bunch of threats." Reeves added that he "might have said" he had a gun during the phone calls, but neither he nor Walker actually had a gun although the callers said they had "a gun with a thirty round clip." Reeves said that Walker gave the callers his address, and a "big body" car and a white car subsequently came down the street while Reeves and Walker were standing on the front porch. After the cars stopped to allow the occupants to talk to each other, the "big body" car left, but the white car "pulled up and stayed there for a minute." Adams got out of the car "like he wanted to negotiate" but got back inside the car. Reeves then heard two or three gunshots and ran toward the back of the house.

Reeves said that he had known the defendant since the eleventh grade but did not know the defendant was in the car that night. He said he had met Adams at the county workhouse and acknowledged that he had prior misdemeanor convictions in Montgomery County and had been incarcerated in Missouri for receiving stolen property.

Angel Penney testified that she, Adams, Hendrix, and "Whitney" were at the Silver Dollar Grocery Store when Adams received a call on his cellular telephone and that Adams was on the phone "basically the whole night." Rick Banasiak subsequently arrived at the store, and they all went to a bowling alley. Penney said that as the phone calls progressed, Adams got "very mad . . . saying that the person on the other end was basically harassing, saying statements that shouldn't be stated." She heard Adams talk about fighting and use the term "pistol play." Adams, Hendrix, and Banasiak later left in Banasiak's car, and Penney saw them again sometime after 11:00 p.m. at an apartment complex where Hendrix had told her to meet them. Banasiak, Hendrix, Adams, and a "tall black man" got out of Banasiak's car, and Penney and Hendrix left. Hendrix then asked her to drive by "a house that had tape around it and [an] ambulance and everything. He was crying in the car and he stated that . . . a dude ended up getting killed there."

Codefendant Rick Banasiak testified that he pled guilty to aggravated assault and received a post-trial diversion sentence of six years. He said he met Hendrix, Adams, and Penney, who had

a friend with her, at the Silver Dollar Grocery Store around 8:00 or 9:00 p.m. on the night of the shooting, and they later went to a bowling alley. He said several telephone calls were made between Adams and another person, during which “they were yelling at each other and insulting each other, and they kept hanging up on each other and calling back.” The phone conversations escalated to the point where all the parties were “talking about getting guns and stuff like that.” Banasiak, Adams, and Hendrix then drove to “Gotti’s” apartment in Banasiak’s 1988 white, four-door Chevrolet Celebrity automobile. Hendrix and Adams went inside to talk to Gotti about a gun while Banasiak remained in the car. About fifteen minutes later, Hendrix, Adams, and the defendant came out and Banasiak drove them to the defendant’s house where the defendant retrieved a rifle and a case and placed the case in the trunk of Banasiak’s car. They drove back to Gotti’s apartment, during which time the defendant was on the phone “talking smack . . . like I am going to shoot you or . . . I am going to get you,” and Hendrix and Adams were talking about “street sweepers, meaning Mach 10’s.” Banasiak said the callers told Adams “they were going to kill his mother, [and] that’s when [Adams] lost it.”

Banasiak said that the defendant and Adams got directions to the victim’s house, and en route, they stopped at the “Silver Dollar store intersection” and talked to Justin Napper and another individual who were in a “big-bodied” car. The defendant told Napper to follow them, and, after they turned onto Patricia Drive, they made a U-turn and the two cars were sitting side-by-side. Hendrix was seated in the front passenger seat, the defendant was in the backseat on the driver’s side, and Adams was in the backseat on the passenger’s side. The defendant “put the clip in the gun and locked and loaded” while holding the telephone up and saying, “[L]isten to this.” Banasiak saw two men on the porch of the victim’s house and, when he pulled his car over, Adams got out and the defendant pointed the gun out the window. Banasiak and Hendrix yelled for Adams to get back inside the car, and as Adams got in “right before he was about to close the door,” the shooting started. Banasiak heard four gunshots “like this, tap----tap, tap, tap.” He then “floored” his vehicle and drove “to a place directed by [the defendant] to pull over and put the gun in the trunk.” They then drove to another location, also at the defendant’s direction, where the defendant retrieved the gun and ran toward a fence. After the defendant returned to the car, Banasiak drove to Gotti’s apartment where everyone got out and told Banasiak to “keep [his] mouth quiet.”

Banasiak said he gave a written statement to the police the following morning and the police took possession of his car. After his car was returned to him, he found a shell casing underneath the console. On cross-examination, Banasiak acknowledged that, in his statement, he did not mention that the defendant had been “talking smack” on the phone, that anyone had “sweepers or [a] Mach 10,” or that he heard the gun “being locked and loaded.” However, he maintained that his statement was truthful and that his testimony at Hendrix’s transfer hearing was truthful.

Officer Gary Hodges of the Clarksville Police Department testified that he responded to the crime scene and made photographs of a bullet hole in the eave over the porch. He said he lifted a fingerprint from the trunk of Banasiak’s automobile and found two .30 caliber carbine shell casings at the dead end of Barkwood Drive.

Codefendant Devin Hendrix testified that he was seventeen years old at the time of the shooting and that he pled guilty to voluntary manslaughter, receiving a five-year probationary sentence. He said he, Adams, Penney, and “Whitney” met Banasiak at the Silver Dollar Grocery Store where Adams tried to call “a girl named Sarah,” but she did not want to talk to him. Hendrix and Banasiak then left for the bowling alley in Banasiak’s car, and Adams left with Penney and “Whitney.” Adams, who appeared to be “pretty upset,” was talking on the cell phone when Hendrix and Banasiak arrived at the bowling alley and the conversation was “leading up to fight with somebody because [Adams] didn’t know who the guy was and they were just exchanging words back and forth.” After Adams hung up, Hendrix telephoned the caller, and more calls were made back and forth between the parties. After the caller threatened to hurt Adams’ mother, Hendrix, Adams, and Banasiak went to Gotti’s¹ residence where Hendrix and Adams went inside while Banasiak waited in the car. Adams told the defendant about the phone calls, and the defendant grabbed the phone and said he wanted to telephone the caller to see if he knew him. The defendant, Banasiak, Hendrix, and Adams then went to the defendant’s house where the defendant retrieved an assault rifle and a clip which he loaded into the rifle. Hendrix said the defendant told them he had put more clips in the trunk. The defendant told Banasiak to drive to the victim’s house, and Adams called the victim to get directions. En route, they met another car, and the defendant told the occupants of that car to follow them.

Hendrix said that while Adams was talking to the victim on the phone, Adams held the phone close to the gun and the defendant cocked it. When they arrived at the victim’s house, Hendrix saw “a bigger white male and . . . a skinnier black male [who] had his shirt off” on the porch, and the car that had been following them stopped next to them. Adams got out of the car, and the defendant “started cocking the gun up.” As Adams was walking back toward the car, the defendant adjusted the bandana on his face and said, “[Y]’all need to move out of the way, I’m going to kill this MF.” The other car “took off,” and, as Adams was getting into the car, the defendant fired four shots which Hendrix described as “one, two – and then one, two, real quick.” Banasiak then drove away hurriedly, and the defendant told him he needed to get rid of the gun. At the defendant’s direction, Banasiak turned into a neighborhood with a dead end where the defendant threw out a shell and put the gun in the trunk. They then went to the defendant’s “girl’s house” where the defendant “ran around back with the gun in the case” but returned without the gun. Hendrix said they went back to Gotti’s apartment, and the defendant said, “[N]one of this ever happened, none of y’all know me.” Hendrix described the defendant’s demeanor as “more or less calm but angry and nervous at the same time.”

Codefendant Eric Adams testified that he pled guilty to facilitation of first degree murder in exchange for a sentence of thirteen and one-half years at 30% as a result of his involvement in the victim’s murder. He had known Hendrix and Banasiak for a few months at the time of the shooting but did not know the defendant. He called MacDonagh while at the Silver Dollar Grocery Store because he was intoxicated and was “making a joke out of it.” Adams, Hendrix, Banasiak, “Whitney,” and Penney then left the store, and Adams received a phone call from an unknown

¹Hendrix testified that Gotti’s real name was Edward Morris.

individual who told him they had met before and asked “some homosexual questions.” Adams said he hung up on the caller but “got a quick call back and called again and the same kind of stuff. It was you know, you wanted to suck my – all that? That’s when things started to get heated and hung [sic] up again. Phone calls kept coming back and forth.” Adams acknowledged that by the time the group arrived at the bowling alley, the phone calls had escalated to the point “where we were making threats, you want to fight?” and guns were mentioned.

Adams said he, Hendrix, and Banasiak then went to Gotti’s apartment where Gotti introduced the defendant to him and Hendrix. When Adams received another phone call, the defendant got on the phone and listened to the caller. Adams said the defendant’s reaction to the conversation was “[t]he same as mine, F you, wherever you want to meet us, we’ll be there. If you want to fight, let’s fight.” Adams said that the callers threatened to kill him and his family, the defendant, and Hendrix. Adams, Hendrix, Banasiak, and the defendant left Gotti’s apartment and drove to a house where the defendant retrieved a rifle, case, and three clips. The defendant told them he had gotten the gun to “scare” the callers and placed it on the floorboard in the backseat. They returned to Gotti’s apartment where the defendant argued with the callers and Adams heard “talk about gun play.” Adams, Hendrix, Banasiak, and the defendant left Gotti’s apartment, with the defendant in the backseat behind Banasiak and Adams in the backseat behind Hendrix. They flagged down a car they met at the corner of Trenton and Needmore and asked the occupants, who were “some associates” of the defendant, to follow them.

Adams said that when the group reached Patricia Drive, they drove past the victim’s house, made a U-turn, and stopped to talk to the occupants of the other car. Adams then got out of the car and started arguing with the victim and Reeves who were on the front porch. Hendrix and Banasiak yelled for Adams to get back in the car and, as Adams opened the door, he saw the rifle pointed “out over the driver’s side door.” As he “slid” inside the car, he “bumped” into the defendant and heard four gunshots which he described as “boom, boom, boom, boom! It wasn’t . . . just one and then take a break and then one and then take a break[.] It happened quick.” The group then fled the scene and drove to “a little neighborhood that had like a cove at the end” where everyone got out and “scoured the car for shells, casings, . . . and threw them out.” The defendant put the gun in its case, and they drove to another neighborhood where the defendant hid the gun. Adams said that no one in the car had planned to shoot anyone.

Quintin St. Julien testified that he gave the defendant a ride to Gotti’s apartment in January 2002. The defendant went inside the apartment and returned with a gun case which he placed in the trunk of St. Julien’s car. The defendant then asked St. Julien to drive him to Sunnydale Trailer Park where the defendant put the case in the trunk of “an older model car” with three male occupants.

Detective Alan Charvis of the Clarksville Police Department Major Crimes Unit testified that he interviewed the defendant at the Hopkinsville Police Department on January 21, 2002, at which time the defendant signed a six-page statement that Detective Charvis wrote at the defendant’s request. Detective Charvis read the defendant’s statement into evidence. In his statement, the defendant said he was at Gotti’s apartment the night of the shooting when Adams arrived talking

loudly on the phone. Adams subsequently gave the phone to Gotti who obtained the address and hung up. The defendant said that the parties then started “playing phone tag back and forth” and, at one point, the man on the other end of the line “started talking gay stuff and threatening families. Saying he was going to kill my Mama and kill me. He said he was going to do me in the booty and make me suck his thing. This upset me and I told [Adams] that I would ride with him. When [Adams] came in the door, I hear[d] him talking about guns on the phone.” The defendant said he then left with Adams and two unknown men in a white Chevrolet Celebrity automobile. They drove to the defendant’s house where he retrieved an M-1 carbine gun in a black case and put it in the trunk of the car. They later saw the defendant’s cousins, Juan and Justin Napper, at the intersection of Needmore and Trenton and told them to follow them. After receiving directions to the victim’s house, they stopped at the intersection of Old Trenton Road and West Dunbar Cave where the defendant took the rifle out of the trunk. They passed the victim’s house and had to turn around. The defendant’s cousins pulled up next to them, and the defendant told them to get out of the way if shooting started. Adams jumped out of the car, and one of the men in the front seat told Adams to get back in the car. When Adams got back in the car, he told the group that “he wanted us all to get out and beat the dudes up and then shoot them.” The defendant said he told Adams, “[N]o, let’s just shoot in the air a couple of times and ride.” The defendant said that as he was looking at the top of the porch of the victim’s house, he fired one shot to scare the victim and Reeves, and Adams “started grabbing, saying that he wanted to shoot.” The defendant then related what happened next:

I saw the white guy [the victim] running up the stairs after the gun went off when [Adams] grabbed me. The gun went off two more times. I saw the white dude [the victim] fall like he tripped. We left and I haven’t seen my cousins since. We stopped off Trenton Road on Barkwood and I put the rifle in the case. While I was in the trunk the two dudes in front got the casings and [Adams] got one. The guy in the front passenger seat threw them out. We went to Nicole Street’s house and I put the gun in the woods behind her house. I went to Gotti’s house and I don’t know where everybody else went. . . . I spent the night there [Gotti’s house].

The defendant said he retrieved the gun from Street’s house the next day and put it in a closet at Gotti’s apartment. After learning that the police were looking for a gun, the defendant retrieved the gun from Gotti’s apartment, concealed it in a Casio box, and put it in the trunk of Quintin St. Julien’s car. The defendant and St. Julien then drove to Sunnysdale where the defendant asked “J-Rah” to “hold something” for him. “J-Rah” instructed the defendant to put the gun in the trunk of a white car. St. Julien then drove the defendant to Gotti’s where the defendant’s sister, Kytanya, later came and told him that “the police were trying to kill” him.

Detective Charvis said he subsequently recovered the defendant’s rifle and case and found seven loaded clips inside the case.

Agent Darrin Shockey of the Tennessee Bureau of Investigation (“TBI”) testified that he analyzed the latent fingerprint lifts submitted by Detective Charvis. He identified one of the prints lifted from the 1988 white Chevrolet Celebrity as the defendant’s. He also examined the M-1

carbine rifle and a series of magazines and cartridges, but there were no identifiable latent prints from those objects.

Special Agent Forensic Scientist Terri Arney of the TBI testified that she examined the semi-automatic rifle and seven clips and said that three of the clips could hold fifteen cartridges while the others could hold thirty. She recovered 166 bullets from the clips and examined two .30 caliber carbine cartridge casings which she determined had been fired in the rifle. The two casings were also of the same caliber and had the same manufacturer's brand as some of the live cartridges. Agent Arney also compared the projectile recovered from the victim's body with the test-fired bullets from the rifle and determined that it had the same "class characteristics," but the individual characteristics were insufficient for her to make a 100% identification.

Defense Proof

Kytanya Napper, the defendant's sister, testified that she and the defendant were at Gotti's apartment on January 14, 2002, when Adams and another man entered while a third man stayed outside in the car. The two men were talking on the telephone and were mad. She said she left shortly thereafter and did not have any knowledge about the events that transpired that night. The police came to her house the next day looking for the defendant and told her that the situation was "very serious . . . to the point that [they] would shoot first and ask questions later." She said she never told the defendant about the statement made by the police and did not see him again until she visited him in jail.

The twenty-seven-year-old defendant testified that his statement to Detective Charvis was truthful, but the chronological order was confused. He acknowledged that he did not know any of the codefendants before the night of the shooting. He said that Shannan Reeves and the victim had given him a ride home about a month before the shooting, but he did not know the victim's name at the time. The defendant said he was intoxicated the night of the shooting but was not "sloppy drunk." He said he had spent six months in the military before being medically discharged in 1994 as the result of a broken arm. In the military, he had qualified as an expert with the M16 A1 and M16 A2. He acknowledged that the M16 rifle is similar to the semi-automatic rifle used in the shooting.

The defendant said the callers he talked to on the phone the night of the shooting never identified themselves, and he did not recognize the voice of either as Reeves. He said the first time he talked to the callers was "a hang-up situation," after which he "laughed it off" and gave the phone back to Adams. The phone rang again, threats were made, and the conversation escalated to the point where the callers said, "I know where your Mom lives. I'll kill your whole family." The defendant and codefendants then went to the defendant's house to get his gun and case which contained seven loaded clips. The defendant took the gun and one short and one long clip² out of

²The defendant acknowledged that a short clip holds fifteen rounds and that a long clip holds thirty rounds.

the case and then put the case in the trunk of Banasiak's car.³ He said he thought he needed two clips because "the way [the callers were] coming across was like a whole lot of people . . . [w]ere going to be there. They had weapons[.]" They later saw the defendant's cousins, Abduwon and Justin Napper, in another car, and the defendant told the Nappers to follow them as "a security thing" because he did not know the codefendants.

The defendant said that when he and the codefendants arrived at the victim's house, the victim and Reeves were standing on the porch with their hands up in the air gesturing "like you want some of this." They then drove past the victim's house, made a U-turn, and, as their car and the Nappers' car were "sitting parallel to each other," the defendant told the Nappers to leave if shooting started. The defendant said he and Adams discussed shooting into the air to scare the victim and Reeves, but Adams "jumped out of the car and ran around in front." The defendant said he loaded the gun but denied he chambered a round while on the phone with the victim. Reeves was standing on the porch, and the victim was about fifteen feet from the van parked in the driveway and "came far enough that [the defendant] could actually hear him and see him." The defendant pointed the gun out the driver's side window, because the back window did not go down all the way, and aimed it at the top of the eave of the victim's house and fired one shot, after which the victim started running. Adams got back into the car, and the defendant "put the weapon back out of the window and took aim over the eave again, and I pulled the trigger one time. I went to pull the trigger again. I guess I had a set amount of shots that I was going to fire because I have always known it was four shots[.]" The defendant said he fired one shot and then two shots in "rapid succession right after that." The defendant said he fired again and saw the victim stumble, fall, get up on his hands and knees, and then fall back down. He said that Adams grabbed him at one point while he was pulling the trigger and denied that he had aimed at the victim or Reeves.

The defendant said that, after the shooting, he and the codefendants drove to the dead end of Barkwood Drive where they discarded the shell casings and "put the gun back up." They then went to Nicole Street's house where the defendant hid the gun in the woods behind the house. He retrieved the gun the next morning and took it to Gotti's apartment. Later that day, he removed the gun from Gotti's apartment and concealed it in a Casio keyboard box. St. Julien then drove the defendant to Sunnydale where the defendant gave the gun to "an acquaintance." The defendant said his sister told him the police were looking for him and had said if they saw him they would shoot if they thought he had a gun or was going to run. He said he was eventually arrested in Kentucky and acknowledged that he had a prior felony conviction in Kentucky.

In rebuttal, the State recalled codefendants Rick Banasiak and Devin Hendrix. Banasiak identified a photograph of the white car he was driving the night of the shooting and said that the back window only opened part of the way. Hendrix said he was looking at the defendant when the shots were fired and that the rifle was pointed out the back window which was "about halfway

³ On cross-examination, the defendant acknowledged that, in his statement, he had said he took the rifle out of the trunk at the corner of Old Trenton Road and West Dunbar Cave but said that was not correct.

down.” Defense counsel then recalled Banasiak who said he thought the rifle was pointed out the back window when the shots were fired.

ANALYSIS

The defendant’s sole issue on appeal is whether the evidence is sufficient to support his conviction for second degree murder. He argues that no rational juror could have concluded beyond a reasonable doubt that he “was aware that his conduct was reasonably certain to cause [the victim’s] death.” The State asserts that the evidence is sufficient to support the defendant’s conviction.

In considering this issue, we apply the rule that where sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573 (1979); see also Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. See State v. Pappas, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

Second degree murder is defined as “[a] knowing killing of another.” Tenn. Code Ann. § 39-13-210(a)(1) (2003). “Knowing” is defined as:

“Knowing” refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature

of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result[.]

Id. § 39-11-106(a)(20). To support a second degree murder conviction, the State had only to establish that the killing of the victim was knowing beyond a reasonable doubt. See State v. Summerall, 926 S.W.2d 272, 275 (Tenn. Crim. App. 1995).

Taken in the light most favorable to the State, the proof showed that codefendants Banasiak, Hendrix, and Adams, because of the “prank call” and the more threatening calls afterwards, went to the defendant’s house, where the defendant armed himself with a rifle and then went with the three to the residence of the victim. Upon their arrival, the defendant loaded the rifle with a clip of ammunition and fired four times out the window. Banasiak then “floored” the vehicle and, after they had gone a distance, the defendant directed they stop so he could put the rifle in the trunk. At another location, the defendant retrieved the rifle from the trunk and ran toward a fence. Codefendant Hendrix testified that, before firing the shots, the defendant said, “I’m going to kill this MF.” Hendrix said that the defendant later disposed of the rifle by leaving it in the area near his girlfriend’s house. In his statement to Detective Charvis, the defendant claimed that he had fired the first shot to scare the victim and that the rifle “went off two more times.”

On appeal, the defendant argues that “[u]nder [the] circumstances [of the shooting], only the best of marksmen could have fired the shot knowing that it was reasonably certain that the shot would kill [the victim], and there would have been three wounds not just one.” The defendant cites no authorities for his argument that, even though he had expressed his intent to kill the victim and shot several times at the victim, he could not be reasonably certain that he would kill the victim if the shot was a difficult one and he was not a particularly skilled marksman. In fact, as we have set out, the defendant testified that, while in military service, he had qualified as an expert with the M16 A1 and A2. Thus, the evidence, as we have set out in this opinion, was easily sufficient for the jury to have determined that the defendant knowingly killed the victim.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgments of the trial court.

ALAN E. GLENN, JUDGE